

## CITY OF COLLEGE PARK

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ORAL ARGUMENT  
CASE # CPD-2014-01  
STEVEN BEHR  
4618 COLLEGE AVENUE

+ + + + +

TUESDAY  
AUGUST 11, 2015

+ + + + +

The oral argument was heard in the College Park City Hall, 4500 Knox Road, College Park, Maryland, at 7:00 p.m. Andrew Fellows, Mayor, presiding.

PRESENT

ANDREW FELLOWS, Mayor  
DENISE C. MITCHELL, Mayor Pro Tem  
P.J. BRENNAN, Councilmember  
ROBERT W. DAY, Councilmember  
MONROE S. DENNIS, Councilmember  
ALAN Y. HEW, Councilmember  
FAZLUL KABIR, Councilmember  
STEPHANIE STULLICH, Councilmember  
PATRICK WOJAHN, Councilmember

ALSO PRESENT

JOSEPH NAGRO, City Manager  
JANEEN S. MILLER, City Clerk  
TERRY SCHUM, Planning Director  
SUELLEN FERGUSON, City Attorney  
SUE FORD, City Attorney  
MIRIAM BADER, City Planner  
BILL GARDINER, Assistant City Manager

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1 P-R-O-C-E-E-D-I-N-G-S

2 7:01 p.m.

3 MAYOR FELLOWS: Good evening and welcome  
4 to the hearing on oral argument -- may I have  
5 everybody's attention, please? The hearing on the  
6 oral argument CPD-2014-01, 4618 College Avenue.

7 I believe we're going to first have an  
8 orientation by the planning stuff. And if necessary,  
9 a representative of the Office of the City Attorney.

10 Ms. Schum.

11 MS. SCHUM: Yes, thank you, Mr. Mayor,  
12 members of the Council. Terry Schum, planning  
13 director for the City.

14 As you said, this is a case for a departure.  
15 And the specific request is for a departure of 11.4  
16 feet from the required 22-foot driveway width for a  
17 parking lot to be accessed from the street. The  
18 applicant in this case is Steven Behr, and the address  
19 is 4618 College Avenue.

20 So, in this case the reason the applicant  
21 is before you is because he is proposing to convert  
22 the single-family dwelling he currently has and is

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1 rented and licensed with the City as a rental, he's  
2 proposing to convert it to a rooming house which allows  
3 five guestrooms for up to nine guests. And this is  
4 a permitted use in this zone by the zoning ordinance.

5 So, the departure is necessary, because  
6 the zoning ordinance requires this parking lot and  
7 driveway design for this particular use.

8 So, obviously you've been here before on  
9 this application. And I'll go through the history of  
10 the case in just a minute, but let me just run through  
11 quickly some slides to orient you to the site.

12 So, this is the location of the property  
13 at 4618 College Avenue. It's in the Old Town Historic  
14 District. And the property is a contributing  
15 resource to the Historic District.

16 This shows the zoning of the property.  
17 So, the subject property is outlined in blue. So, you  
18 can see it is zoned R-18, which is a multifamily,  
19 medium-density residential zone, but it adjoins  
20 property in the single-family residential zone, and  
21 then the commercial -- it's like a local neighborhood  
22 commercial zone at the corner of College and Rhode

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1 Island.

2 This is an aerial view of the property.  
3 The subject property is under the blue dot.

4 This is a bird's eye view of the property,  
5 which gives you a little bit better view of how the  
6 property exists today with the driveway from the  
7 street and a gravel -- a gravel driveway and a gravel  
8 parking lot in the rear.

9 And this is probably the best view to stay  
10 on for a few minutes looking at the particular issue.

11 So, the subject property, 4618, is on the  
12 left. And to the right is 4620, the adjoining  
13 property. And these two properties have a Joint  
14 Driveway Agreement.

15 So, they actually share access, because  
16 they both have parking lots in the rear of their  
17 respective properties.

18 So, if you look at this, you can see how  
19 the driveway right now extends a little bit into --  
20 in front of the house in the front yard and it is not  
21 of consistent width.

22 It's widest at the front, it narrows

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1 between the two houses and it's 10.6 feet in width at  
2 its narrowest. And then in the back obviously it  
3 widens out again, and in fact there is a 22-foot  
4 driveway width in the rear of the property.

5 This is the site plan and the landscape  
6 plan as proposed by the applicant if this departure  
7 is granted.

8 So, what you see here is a redefined  
9 driveway that narrows in the front yard by placing  
10 timber framing and landscaping to specifically define  
11 the driveway and to prohibit the kind of spillover  
12 parking that sometimes occurs now in the front yard.

13 And you see how the parking spaces are laid  
14 out in the rear. And then you can see the additional  
15 landscaping that's proposed in the rear, on the side  
16 and in the front yard.

17 The joint driveway easement with the  
18 adjoining property owner ends up providing the subject  
19 property with an additional six feet of driveway width  
20 under the terms of that agreement. However, for the  
21 sake of this departure, that isn't allowed to be  
22 counted. So, the amount of departure required is that

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1 11.4 feet. That's part of the application.

2 Okay. So, let's go back in time a little  
3 bit. We've been with this application for just over  
4 a year. The applicant first submitted his  
5 application in July 2014.

6 And before it was sent to the Advisory  
7 Planning Commission, he went to the Historic  
8 Preservation Commission in Prince George's County to  
9 see if he would be able to get an Historic Area Work  
10 Permit to implement that site plan I just showed you,  
11 so, to reconvert that environmental setting, which,  
12 frankly, was converted many years ago from a grassy  
13 rear yard to a parking area, but to officially get  
14 approval to convert that to a parking lot with some  
15 changed landscaping.

16 So, that went to the HPC. It was approved  
17 by the HPC. That application was supported by the  
18 City Council back then.

19 And then in December of that year, the APC  
20 held their hearing on the departure application, made  
21 a recommendation coming out of the hearing to approve  
22 it with a number of conditions.

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1           That was sent to the City Council in the  
2 form of a resolution, which on January 3rd after  
3 reviewing that resolution, I believe it was Council  
4 Member Stullich requested that oral argument be heard  
5 on the case rather than just setting in for approval.  
6 So, that oral argument was held on January 27th, 2015.

7           And at that time, your decision was not to  
8 make a final decision at that time, which you could  
9 have done, but instead you remanded the case back to  
10 the APC for them to take additional testimony and to  
11 specifically look at a couple of issues.

12           So, in May, that hearing was held by the  
13 APC, and again the APC decided to approve the departure  
14 and they made some revisions to their initial  
15 conditions to address the concerns in the Remand  
16 Order, and I'll go over those in just a minute, and  
17 issued another resolution.

18           That resolution was then called up, if you  
19 will, where a request was made to hear oral argument.  
20 This time I believe Council Member Day made that  
21 request.

22           And then that brings us to tonight where

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1 we're hearing again oral argument specifically on the  
2 remand hearing, but also this case needs to be decided  
3 in its entirety.

4 So, a decision has never been made in this  
5 case. So, this case needs to be decided. It could  
6 also be remanded again to the APC.

7 Are there other choices? I'll turn to the  
8 attorneys maybe when I'm done and they might need to  
9 fill in some blanks for you in terms of what your  
10 options are tonight once the hearing is held.

11 So, the Remand Order that you've sent to  
12 the APC really focused around two things. One, to  
13 address a criterion in the county zoning ordinance  
14 that was inadvertently left out of the city code and,  
15 therefore, wasn't addressed at all by the APC when they  
16 took up this case the first time.

17 And that was to show how the departure  
18 would not impair the visual, functional or  
19 environmental quality or integrity of the site or the  
20 surrounding neighborhood. So, the APC took that up.

21 The second item was to look more closely  
22 at the condition that was in the first resolution that

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1 required signage to be placed on the driveway to ensure  
2 that it would remain free of parked cars to allow  
3 adequate ingress and egress.

4           So, the fault you found with that when you  
5 took up the case, was that it didn't really address  
6 the Joint Driveway Agreement and the fact that the  
7 adjoining property owner, there was nothing in that  
8 condition that required that property owner to post  
9 signage or otherwise, except for the agreement itself,  
10 which we had no enforcement authority over, to ensure  
11 that the driveway would be free and clear. So, that's  
12 what the APC took up and decided in their June 4th  
13 resolution.

14           I should back up just for your information  
15 and say that at the first hearing of the APC, no one  
16 appeared in support or in opposition of the  
17 application. But at the second hearing, there were  
18 a number of people who appeared in opposition.

19           So, there were two individuals who  
20 appeared to testify in opposition. There were  
21 another three letters entered into the record opposing  
22 the departure. And then seven other individuals

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1 became parties of record in opposition to the case.

2           So, therefore, all of these persons are now  
3 able to come before you tonight and participate in this  
4 oral argument and be the opposition to the case. And  
5 I see some of them may be in the audience tonight.

6           So, you have the APC's resolution before  
7 you. What I've done is just, you know, put it on the  
8 screen for reference if you need to.

9           There are seven conditions that the APC has  
10 recommended. Most of this was in their initial  
11 resolution and recommendation with the exception of  
12 1D shown here, which is very specific language now  
13 about how signage should occur in the driveway to  
14 hopefully ensure adequate ingress and egress and that  
15 it remain free and clear, including signage that would  
16 indicate that anyone parked in the driveway could be  
17 towed.

18           And the other new item here is just a  
19 statement about, you know, replenishing the driveway  
20 with gravel and the fact that the gravel should  
21 aesthetically match others in the neighborhood.

22           And the other new condition is in part

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1 Number 7. And it's very lengthy, but the key point  
2 here is that it requires that the Joint Driveway  
3 Agreement be amended to require the other party to the  
4 agreement, besides the applicant here, also post  
5 signage on the driveway saying "no parking" and that  
6 towing would enforce it. And specifically, that the  
7 County and/or the City would be able to do the towing,  
8 enforce this particular condition.

9 So, those are the primary changes since the  
10 first round. And if there aren't any questions, that  
11 concludes the staff's orientation.

12 MAYOR FELLOWS: Questions of staff?

13 (No questions.)

14 MAYOR FELLOWS: I see none. Thank you.

15 (Pause.)

16 MAYOR FELLOWS: And next we go to the --  
17 I'm trying to find my place.

18 (Pause.)

19 MAYOR FELLOWS: This would be your  
20 argument against the recommendation of the Advisory  
21 Planning Commission. Sorry it took me so long to get  
22 that out.

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1           So, who will be presenting the oral  
2 argument against the Advisory Planning Commission  
3 recommendation?

4           (Pause.)

5           MS. FERGUSON: Okay. This would be the  
6 opposition. If the applicant is opposed in any way  
7 to any portion of the recommendation of the Advisory  
8 Planning Commission, then that position should be  
9 taken now.

10           And I'd like to mention for the Council and  
11 the Mayor that with me tonight is Susan Ford, who is  
12 a partner in my firm who sits with the APC and is here  
13 to help with the background.

14           MAYOR FELLOWS: Mm-hm. So, this oral  
15 argument isn't necessarily against the entire  
16 recommendation, just any part of the recommendation.

17           MS. FERGUSON: Yes.

18           MR. BEHR: Thank you all for clarifying.  
19 Appreciate that.

20           I do want to reiterate my name is Steven  
21 Behr. I live at 14835 Melfordshire Way, Silver  
22 Spring, Maryland, Montgomery County, but I appreciate

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1 all your time and effort in this case and I am 100  
2 percent in agreement with 99.9 percent of this.

3           There's one section that we did oppose at  
4 the APC, which is Number 7, which was the addition of  
5 a condition on the driveway agreement itself to allow  
6 the City or the County to tow and enforce tickets.

7           We feel that it's an undue additional  
8 burden on my neighbor's property, as well as my  
9 property, to keep something like that tied forever  
10 with these properties when the current agreement  
11 already enforces -- says that there shall be no parking  
12 in the shared driveway.

13           And we're aware of that now and plan to  
14 enforce that ourselves between both of the neighbors.  
15 So, we don't feel that there's a need for this  
16 additional condition.

17           Other than that, I wanted to thank the City  
18 and the Council Members for their support in working  
19 with me through this process. And we're definitely  
20 looking forward to getting a successful vote tonight  
21 to be granted the departure and will do our utmost to  
22 make the property great. Thank you.

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1 MAYOR FELLOWS: All right. Thank you.

2 Sir, welcome.

3 MR. FARRAR: Good afternoon, Mr. Mayor,  
4 distinguished members of the City Council, the staff.

5 My name is Bradley Farrar. I'm council to  
6 Mr. Behr. I'm also a resident of the city of College  
7 Park.

8 I'd like to reiterate what Mr. Behr said,  
9 which is that we are essentially, for the most part,  
10 in favor of the adoption of the resolution with the  
11 exception of Item Number 7.

12 We think it's problematic for a number of  
13 reasons. It's problematic for the City. It's  
14 certainly problematic for the property owners.

15 It calls into question the process, we  
16 believe. You remanded this at APC, they took it under  
17 consideration, but what you said initially was -- in  
18 your initial remand was for the APC to take additional  
19 testimony and to do further consideration.

20 You didn't ask them to come back with  
21 additional conditions, which they did, which is  
22 outside the scope of what you remanded them -- you

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1 remand to do.

2           The record is complete as it relates to the  
3 Joint Driveway Agreement. And the Joint Driveway  
4 Agreement prohibits, it already prohibits parking in  
5 the joint driveway.

6           What this particular resolution does is it  
7 creates a burden not only on the City of College of  
8 Park as it relates to the easement -- so, the City of  
9 College Park might get an easement, and then you're  
10 actually placing an easement on Prince George's  
11 County, which may or may not want the easement.

12           So, then you're raising questions about  
13 maintenance of the easement, payment for the easement,  
14 who enforces, how you enforce, can you actually have  
15 under Prince George's County Code Title 26, does the  
16 City of College Park actually as an easement owner  
17 versus a property owner, do you have the right to  
18 actually enforce parking in the easement?

19           I don't know. Hadn't been addressed.  
20 Hadn't really been thought out. No one's really  
21 talked about it. Those are items that you have to  
22 consider.

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1           What about revenue? Who shares in the  
2 revenue for the parking and the towing? How is it  
3 split? How is it divided?

4           What about liability? As we mentioned  
5 during our hearing with the APC, we told them that if,  
6 for instance, someone comes out and sees their car  
7 being towed and someone goes ballistic, someone gets  
8 hurt, who takes the liability if the City of College  
9 Park called?

10           Certainly the City of College Park doesn't  
11 have any tow trucks. You'd have to obviously -- you'd  
12 obviously have to contract this out. How do you do  
13 that?

14           There's a number of questions we believe  
15 that the City hasn't really considered in thinking  
16 about this.

17           We believe that Mr. Behr and Ms. Miller,  
18 who are the joint driveway owners, they've done an  
19 outstanding job of enforcing the parking agreement.

20           The City of College Park certainly can't  
21 do any better. There is no evidence below with the  
22 APC that there is a problem with parking, that there

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1 is a problem with overcrowding in the Joint Driveway  
2 Agreement.

3 And so, because of that we think it's  
4 important, we think it's critical that you adopt the  
5 resolution without Item Number 7.

6 Finally, what I'd like to suggest to the  
7 City Council is this represents under the law what's  
8 called an impermissible change of mind.

9 The APC originally approved and  
10 recommended what happened, the resolution that was  
11 submitted to the City Council. When you remanded it,  
12 it came back and they changed their position and under  
13 the current case law, what they have to demonstrate  
14 is a number of items.

15 What they have to demonstrate is that there  
16 was -- that there was fraud. They have to demonstrate  
17 that there was a mistake. They have to show a number  
18 of other items that just have not been demonstrated  
19 here in order for them to put this resolution in.

20 So, for the following reasons, and I'm  
21 willing to take any questions, for the following  
22 reasons we would respectfully ask the City Council to

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1 adopt the resolution without Item Number 7. Thank  
2 you, Mr. Mayor.

3 MAYOR FELLOWS: Questions.

4 MR. FARRAR: Certainly.

5 MAYOR FELLOWS: Yes, is this the  
6 appropriate time for questions for those arguing  
7 against this portion?

8 MS. FERGUSON: Yes.

9 MAYOR FELLOWS: So, Mr. Brennan.

10 COUNCILMEMBER BRENNAN: Thanks, Mr.  
11 Mayor.

12 Earlier Mr. Behr mentioned that he would  
13 like to have Number 7 taken off of the APC's  
14 recommendation and that he had a procedure with the  
15 adjacent property owner in place to manage any issues  
16 that might arise in the driveway to eliminate cars from  
17 the driveway that might be blocking ingress and  
18 egress, as stated here.

19 Who does the tenant contact if one of Mr.  
20 Behr's tenants have a complaint related to that  
21 blocking?

22 MR. FARRAR: Certainly. Mr. Behr or Ms.

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1 Miller are certainly -- they're here and they can  
2 testify as to how this process works if you'd like to  
3 hear from them.

4 COUNCILMEMBER BRENNAN: Sure. That  
5 would be great.

6 MR. FARRAR: Yes.

7 MR. BEHR: In the time I've owned the home  
8 we've, I think, only had one occasion where a tenant  
9 has in fact called to be towed themselves.

10 We actually haven't had any issues with  
11 parking in our driveway. We work very closely  
12 together. We're neighbors. We're very good  
13 neighbors and we have, you know, a vested interest  
14 to ensure that the parking area is habitable because  
15 we do have a lot of people sharing the shared driveway.  
16 So, they have to get in and out.

17 So, if there's ever been an issue with a  
18 car blocking the driveway, then, you know, our tenants  
19 call us, you know. If it's my tenants, they call me.  
20 And if it's her tenants, they call her. And then we  
21 talk and we get it resolved.

22 In fact, Lisa's husband testified that he

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1 has access to towing contracts that he's dealt with  
2 in the past and we could even put something like that  
3 in place.

4 So, we're not thinking that we can do it  
5 our own, but we do have some people to help us in terms  
6 of doing that if it became a bigger issue, which it  
7 hasn't been an issue.

8 COUNCILMEMBER BRENNAN: Okay. And so, if  
9 somebody parks in either area that's making an issue  
10 for your property, they will contact you.

11 Can they contact Ms. Miller as well and  
12 vice-versa?

13 MS. MILLER: Yes.

14 COUNCILMEMBER BRENNAN: Mr. Behr, you may  
15 have a scenario where a house manager would be  
16 involved.

17 MR. BEHR: Um-hm.

18 COUNCILMEMBER BRENNAN: Would that house  
19 manager be involved in a complaint of this nature?

20 MR. BEHR: Yes. And we could make sure  
21 that they double-check with us before any cars are  
22 towed or any action such as that is taken.

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1 COUNCILMEMBER BRENNAN: So, the tenant  
2 would contact the house manager first?

3 MR. BEHR: They'd be the first line of  
4 offense, obviously, because they're right there.

5 COUNCILMEMBER BRENNAN: Okay. And then  
6 the house manager would directly contact the  
7 enforcement agent, or they would contact you to  
8 address it?

9 MR. BEHR: Correct.

10 COUNCILMEMBER BRENNAN: That's a  
11 question.

12 MR. BEHR: Oh, I would prefer they contact  
13 me so we resolve it beforehand, because we've actually  
14 had that one situation in the past where a tenant took  
15 it upon themselves to tow a car and it happened to be  
16 our neighbor's car, which had every right to be there.

17 So, that's why I would want it to go through  
18 Lisa and myself so we can talk and make sure the right  
19 car gets towed and that nobody is put out and that any  
20 liability is shared amongst ourselves.

21 COUNCILMEMBER BRENNAN: Okay. But in  
22 this case if somebody is parked in the driveway

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1 regardless of whether or not they're a friend or not  
2 if you can't get in touch with them to remove it, you  
3 would have to have the car removed.

4 MR. BEHR: And there are going to be  
5 provisions in my lease for sure, and Lisa can speak  
6 to hers, that there will be no parking along the  
7 driveway from any tenant. And that the tenants are  
8 responsible for ensuring none of their friends, guests  
9 or anyone else park there, because they'll be reliable  
10 for any fines, any towing expenses or anything else  
11 associated with that.

12 And if we have to, we will tow it if it  
13 becomes an obstacle.

14 COUNCILMEMBER BRENNAN: And when you say  
15 "fines," do you mean assessed by the tow company, or  
16 will you be assessing your own fines to your tenants?

17 MR. BEHR: We're not -- I'm not assessing  
18 any fines. But with this potentiality in place where  
19 the City or the County could potentially fine us or  
20 tow, I don't know what could be involved. So, we need  
21 to have enough language to cover all.

22 COUNCILMEMBER BRENNAN: I'm considering

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1 that Seven is not on the table and you're enforcing  
2 it yourself.

3 So, there would be no other penalty, say,  
4 to the lease other than the charges for towing.

5 MR. BEHR: Correct.

6 MS. MILLER: Well, at this time that's  
7 true. Although, that may be something reasonable to  
8 add to the lease. We haven't gotten that far yet.

9 COUNCILMEMBER BRENNAN: Okay. I mean,  
10 that would be something -- if enforcement is something  
11 that you're going to be -- you want to be managing and  
12 you don't want Item 7, something in the lease that  
13 would address a penalty would certainly be something  
14 that would be worth considering now.

15 MS. MILLER: No, it's a good idea. Good  
16 suggestion.

17 COUNCILMEMBER BRENNAN: And who is the  
18 contractor -- who is the towing company that you're  
19 contracted to work with to address issues like this?

20 MS. MILLER: I don't know.

21 MR. BEHR: Right now we don't have one, but

22 --

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1 MS. MILLER: I don't have the name of one  
2 at this point.

3 MS. FERGUSON: Mayor, if I may, and I hate  
4 to interrupt the council member --

5 COUNCILMEMBER BRENNAN: Sure.

6 MS. FERGUSON: -- however, you are  
7 restricted at this point. These conversations could  
8 have happened at the APC, but did not --

9 COUNCILMEMBER BRENNAN: Okay.

10 MS. FERGUSON: -- and you are restricted  
11 to the record of what happened there. If you need more  
12 information or something else of a plan, a proposal  
13 from this applicant, you'd have to send it back down  
14 again.

15 This is not the place for this at this  
16 point, because you are stuck with what's in the  
17 transcript and this is getting beyond where you can  
18 go.

19 And, in fact, if you start making a  
20 decision based on that, we would get into some tricky  
21 territory about --

22 COUNCILMEMBER BRENNAN: Sure.

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1 MS. FERGUSON: -- using it as facts that  
2 you could rely on, frankly.

3 COUNCILMEMBER BRENNAN: I understand. I  
4 guess what I was trying to -- what's unique to this  
5 situation based on our testimony previous is this is  
6 -- this new item is before us and they're opposing this  
7 new item, and I'm trying to -- and the enforcement  
8 mechanism is something that I think warrants  
9 additional scrutiny, but I'll digress.

10 MS. MILLER: Well, maybe I can address  
11 this --

12 MS. FERGUSON: At this point --

13 MS. MILLER: -- and let me answer.

14 MS. FERGUSON: At this point, my point to  
15 the Council is this line of questioning is well outside  
16 of the record and is adding new facts onto something  
17 which you're not allowed to do at this level.

18 You can send it back to the APC to follow  
19 these inquiries if you think that that's appropriate  
20 and necessary, but you cannot proceed on this and use  
21 these facts later to base your decision, because it  
22 will call the decision into question then.

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1 COUNCILMEMBER BRENNAN: Thank you.

2 MS. FERGUSON: So, I'm sorry to have to --

3 MAYOR FELLOWS: Thank you for that  
4 clarification. Actually, when I asked if it was the  
5 time to ask questions, I should have clarified that  
6 the questions need to be based on things that are  
7 already in the record. So, that was my instructional  
8 error.

9 Ms. Mitchell.

10 MAYOR PRO TEM MITCHELL: Thank you, Mr.  
11 Mayor. And thank you to my colleague for bringing up  
12 that point and I guess I want to get clarification on  
13 procedure-wise since you're saying that the  
14 conversation that just occurred is out of the realm  
15 of discussion that came back for the recommendation.

16 If in fact we decide as a council to take  
17 it back to APC for discussion on Item Number 7,  
18 procedurally what is the time frame for APC to look  
19 at it and then bring it back forward?

20 MS. FERGUSON: I believe that -- well,  
21 that is a combination of what -- of the availability  
22 of the APC, which meets at least once a month, and the

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1 notice that has to be given by the applicant of the  
2 fact that it's coming back before the APC.

3 And so, those are the two items that have  
4 to be taken care of. APC meets the first, I think,  
5 Thursday of every month to hear these cases.

6 MAYOR PRO TEM MITCHELL: Okay. Thank  
7 you, Mr. Mayor.

8 MAYOR FELLOWS: Ms. Stullich.

9 COUNCILMEMBER STULLICH: Thank you, Mr.  
10 Mayor. I have a question for Mr. Behr.

11 MR. BEHR: Sure.

12 COUNCILMEMBER STULLICH: So, I believe I  
13 saw in the record that -- well, you have said tonight  
14 also that you are opposed to this provision. And the  
15 APC's recommendation or their decision was to  
16 recommend approval of the departure request on the  
17 condition of what's up there on Number 7, condition  
18 of the enforcement mechanism by the City.

19 And so, are you, you know, you would like  
20 us to take out that condition. But if we do not take  
21 out that condition, are you willing to sign the  
22 agreement that would meet this condition with your

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1 adjoining property owner?

2 MR. BEHR: I would be willing to do that.  
3 Because for me, the amount of time, effort and energy  
4 spent on the entire departure process is much more  
5 important to me than this one condition, but we feel  
6 like it is a very tenuous condition and it was an  
7 afterthought that came up after our initial  
8 discussions of this, came out of the APC.

9 It wasn't something they should have  
10 talked about. It wasn't something they should have  
11 added as a condition, because it wasn't in their realm  
12 to add this type of condition at that time.

13 But, you know, in the grand scheme of  
14 things I'd rather have the departure approved and  
15 moved forward than not, but we do -- we did object at  
16 the APC to this and we didn't really get a chance to  
17 talk about it very much at the APC as much as we're  
18 talking about it here now, but we did object, all of  
19 us. Lisa, myself and my attorney, we all put those  
20 objections on the record.

21 COUNCILMEMBER STULLICH: Right. So, I  
22 understand that you objected to it. I don't think

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1 that means that there's agreement that their decision  
2 was outside of the scope of the remand order. I --  
3 that's your opinion.

4 MR. BEHR: Sure.

5 COUNCILMEMBER STULLICH: You had the  
6 opportunity to object at the APC hearing and you did  
7 so.

8 And when you say you didn't have the  
9 opportunity to go into it as fully as you would like,  
10 are you saying that you wanted to discuss it more, but  
11 the APC would not let you continue discussing it?

12 MR. BEHR: We gave a few minutes of  
13 testimony and then they went into a recess, a  
14 closed-door session where we were not allowed, you  
15 know, it's closed-door.

16 And then when we came back, we were not  
17 given any other opportunity to talk about the matter.  
18 So, yes, we don't feel that we were able to cover all  
19 the ground that would be necessary for a provision of  
20 this magnitude.

21 And I don't, as my attorney said, I don't  
22 believe it's been well thought out how the City or the

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1 County would help us enforce that or help bear burden  
2 of the cost.

3 For me, I mean, hey, if the City wants to  
4 tow, you know, and do the enforcement for us, that's,  
5 you know, that's a benefit, but there are other issues  
6 involving that with tenants and how would that impact  
7 our tenants, how is it going to impact the land  
8 long-term value.

9 Say either myself or Lisa were to sell our  
10 land. This law would go on forever with the  
11 properties however they're being used. So, I don't  
12 --

13 COUNCILMEMBER STULLICH: Because the  
14 departure would also continue forever with the  
15 property.

16 So, if you added value of the rooming house  
17 together with the departure, it would also be  
18 something that would continue.

19 MR. BEHR: I can understand that, and that  
20 only impacts my property. It does not impact Lisa's  
21 property.

22 COUNCILMEMBER STULLICH: Right. And I

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1 also have a question for Ms. Miller.

2 MR. BEHR: Sure.

3 MAYOR FELLOWS: All right.

4 COUNCILMEMBER STULLICH: So, Ms. Miller,  
5 I have the same question for you. Are you willing to  
6 if the Council does not agree to the applicant's desire  
7 to remove this condition, are you willing to sign and  
8 have recorded an amendment to the existing parking  
9 agreement that would allow city enforcement of the  
10 parking restrictions?

11 MS. MILLER: Yes, I would. I think that  
12 it's gone on way too long and these are just blocks  
13 -- one block after another.

14 Like Suellen had said, the discussion here  
15 was out of the realm. I believe this was out of the  
16 realm of them adding this at the last minute without  
17 any input from me.

18 I just think that if they're going to add  
19 my house to this, then the departure should also be  
20 attached to my house.

21 If ever someone, myself or whoever owns the  
22 house in the future, decides to go for a rooming house

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1 exemption, they shouldn't have to revisit the  
2 driveways issue.

3 MAYOR FELLOWS: Ms. Ferguson.

4 MS. FERGUSON: Thank you. I think it's  
5 appropriate to interject again. And I apologize  
6 again for doing so.

7 The answer just given by Ms. Miller, I  
8 assume on behalf of herself and her husband, is  
9 different from the answer that was given that's in your  
10 transcript at the hearing.

11 At the hearing they said, no, they would  
12 not agree to the amendment of the joint driveway use  
13 agreement to include --

14 MR. FARRAR: Mr. Mayor -- excuse me,  
15 Suellen. I hate to interject, but I understand -- I  
16 apologize.

17 (Speaking over each other.)

18 MR. FARRAR: I apologize, but --

19 MAYOR FELLOWS: Let Ms. Ferguson --

20 MR. FARRAR: Wait, Mr. Mayor.

21 MAYOR FELLOWS: Let Ms. Ferguson finish.

22 MR. FARRAR: Again, I apologize because as

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1 Ms. Ferguson interjected during Mr. Brennan's  
2 testimony --

3 MAYOR FELLOWS: Well, but she's our  
4 attorney and I allowed her to do so.

5 MR. FARRAR: I understand she's your  
6 attorney, but --

7 MAYOR FELLOWS: So, this is a College Park  
8 --

9 MR. FARRAR: I understand, Mr. Mayor.

10 MAYOR FELLOWS: -- hearing that's being  
11 held by College Park and our counsel is speaking.

12 MR. FARRAR: Right.

13 MAYOR FELLOWS: It shouldn't be long until  
14 you can get a chance to respond to her.

15 MR. FARRAR: But she's putting facts that  
16 are already on the record.

17 MS. FERGUSON: They're in the transcript.

18 MR. FARRAR: In the transcript.

19 MS. FERGUSON: They're in the transcript  
20 as part of the record of this hearing.

21 MR. FARRAR: And she answered the  
22 question.

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1 MS. SCHUM: Mayor, may I speak?

2 MAJOR FELLOWS: Yes.

3 MS. SCHUM: Thank you.

4 The transcript of course is part of your  
5 record. It's what comes up to you from the APC and  
6 it's also what tells us what is allowable subject  
7 matters to go into this evening.

8 You are looking at this as a reviewing  
9 body, a recommendation. And the transcript, which is  
10 part of this record, indicates that when the Millers  
11 were asked this question at the APC hearing, they  
12 indicated an unwillingness to sign such an agreement.  
13 So, that is a change.

14 So, again, we have something -- additional  
15 testimony happening this evening that was not the  
16 testimony on the night at the APC -- I will note also  
17 on the APC's behalf since they don't testify here, I  
18 was present, as was Ms. Ford, during the full hearing  
19 of this case. And at no time was any request for  
20 additional time to consider Number 7 denied to the  
21 applicant or his attorney or any other person.

22 No one was rushed on this hearing and

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1 everyone had an opportunity to speak as long as they  
2 wished to. There was no denial of a request. You can  
3 also see that in the transcript.

4 It is important that we stick with what was  
5 actually in the record as opposed to how that's  
6 characterized here.

7 And if there is other information that this  
8 applicant wishes to say that they wish they had said  
9 at the APC, they can certainly make that request to  
10 you that you send it back to the APC for that very  
11 purpose.

12 MAYOR FELLOWS: All right. Thank you.

13 So, Mr. Wojahn.

14 COUNCILMEMBER WOJAHN: Yes. Thank you  
15 for your presentation, Mr. Behr and Mr. Horn, and of  
16 course to staff.

17 I guess my question is for staff. I'm  
18 wondering, and Mr. Behr and Mr. Horn raised some  
19 questions about the --

20 MAYOR FELLOWS: Farrar.

21 COUNCILMEMBER WOJAHN: I'm sorry. Mr.  
22 Farrar raised some questions about the practicality

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1 of the -- and the legality of Number 7. And I'm  
2 wondering to what extent the APC dealt with those  
3 issues, discussed those issues in determining to  
4 recommend that Number 7 be made a condition of granting  
5 the departure.

6 MS. FERGUSON: The APC, as noted, was  
7 fully represented by counsel that evening. And as  
8 also noted, they broke to consult with counsel. So,  
9 they have had the advice.

10 And if you would -- if the council would  
11 like to hear the response to the various comments that  
12 were made this evening, we can do so. We can go  
13 through those items in terms of liability and whether  
14 the city would have the ability to go on a property,  
15 et cetera. So, I could answer those if you would like  
16 me to do so.

17 COUNCILMEMBER WOJAHN: I think that would  
18 be helpful. Thank you.

19 MS. FERGUSON: Okay. First of all, this  
20 is not an easement. There's no reference to an  
21 easement, and this is not what's requested.

22 Number Two, the city orders tows

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1 routinely. Cars are towed at the request of the City  
2 on a very routine basis based on certain criteria.

3 Towing can take place from private  
4 property when it's been properly signed under the  
5 Code. And that's what a portion of this looks at. It  
6 requires the required towing signage before any cars  
7 could be towed from the property.

8 The municipality may exercise authority on  
9 private property when there's an agreement with the  
10 owner to allow it.

11 That is what this would accomplish, the  
12 agreement to allow that to be accomplished on the  
13 private property.

14 With respect to liability, the towing  
15 companies have insurance, the city has insurance, and  
16 the owners have insurance. The city is insured to the  
17 actions that it takes, as is the towing company.

18 There is also obviously a towing  
19 commissioner who can handle claims of folks who feel  
20 that they've been towed improperly.

21 There's no revenue from towing. So,  
22 there's no sharing of any kind of revenue. And I --

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1 and when we talk about the burden on the city, the city  
2 always has the burden of enforcement whether it be  
3 zoning enforcement to ensure that departures are  
4 followed and U&Os are followed, or whether it be under  
5 our own code. So, we have that enforcement  
6 obligation.

7 I think the effort here is to make sure that  
8 it's clear how that enforcement would proceed.

9 Without Number 7 you do have -- and there's  
10 some reference in the record to individuals taking  
11 care of complaints, but that of course depends on the  
12 individual owner. And if that owner changes and the  
13 subsequent owners are not interested in enforcing the  
14 agreement, there is then no way for the government to  
15 go onto private property.

16 The bottom line is -- I know this is a while  
17 back you had this. The concern that you all expressed  
18 the last time this came up was that this applicant was  
19 using the property of another person as part of an  
20 application for a departure when they don't have  
21 absolute control over that other property and don't  
22 have control over whether signs are placed on the

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1 buildings and whether the enforcement happens. So,  
2 that was the concern that came up last time around.

3 You're being asked to grant a departure,  
4 which is an exception, based on someone else's  
5 property that's not part of the U&O. And so, this was  
6 the concern that got sent back down to the APC and the  
7 APC responded appropriately.

8 The argument that's been made to you that  
9 in fact there has to be some fraud, mistake or  
10 irregularity, only applies to the decision that you  
11 make eventually out of this case, not what the APC  
12 recommends to you.

13 It's just a recommendation. And so, that  
14 argument has no weight. And any cases discussing that  
15 have no weight with respect to this case, because a  
16 decision hasn't been made here.

17 COUNCILMEMBER WOJAHN: Thank you.

18 MAYOR FELLOWS: Thank you. Other  
19 questions or comments. So, we've heard essentially  
20 the oral argument against the recommendation of  
21 specifically Number 7.

22 And now, typically, we come to the oral

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1 argument in favor of the recommendation of the  
2 Advisory Planning Commission probably this time  
3 limited to Number 7 rather than the entire argument,  
4 unless that makes sense.

5 So, who would make that argument in favor  
6 of the recommendation of the Advisory Planning  
7 Commission?

8 MS. FERGUSON: The only -- I'm sorry.

9 MAYOR FELLOWS: That's all right.

10 MS. FERGUSON: I was distracted for a  
11 second. Anyone who is in support of the APC's  
12 recommendation would testify now.

13 The APC does not testify on its own behalf  
14 --

15 MAYOR FELLOWS: I understand.

16 MS. FERGUSON: -- because you have their  
17 reasoning in front of you. And their recommendation  
18 is -- you may support it, or not support it. So, you  
19 would hear from any other -- any of the parties of  
20 record that were there that evening or any other  
21 parties of record that -- well, it would have to be  
22 there that evening, because we're just talking about

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1 the two issues.

2 So, any other parties of record that  
3 evening who are supportive of the APC's recommendation  
4 can now testify.

5 MAYOR FELLOWS: And is it okay if I narrow  
6 it to Number 7 since the rest of it has not really been  
7 opposed?

8 So, the recommendation related to Number  
9 7 is the thing that -- unless there's a contextual  
10 argument --

11 MS. FERGUSON: Yes.

12 MAYOR FELLOWS: -- for a bigger  
13 discussion.

14 MS. FERGUSON: My recollection is that  
15 there was some testimony in the transcript that  
16 certain of the people who testified were against this  
17 regardless.

18 MAYOR FELLOWS: Uh-huh.

19 MS. FERGUSON: So, I think you should  
20 allow them to express that if that's what they care  
21 to do.

22 I don't know what they care to testify to

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1 this evening, but you can ask that they be focusing  
2 on number 7, certainly.

3 MAYOR FELLOWS: Okay.

4 (Speaking off mic.)

5 MAYOR FELLOWS: Oh, okay. Well, actually  
6 I suppose -- yeah, we can take your testimony.

7 So, this is in opposition to Number 7  
8 specifically?

9 MS. MILLER: Correct.

10 MAYOR FELLOWS: All right.

11 MS. MILLER: Mayor, counsel, Lisa Miller.  
12 Thank you all for your hard work, always.

13 I do want to say that I am in opposition  
14 of this, but I won't stand in the way with this.

15 I also would like to say that Suellen's  
16 explanation that she just gave would have been nice  
17 to have heard at the APC. All we had was this. So,  
18 we had no understanding of how the city might  
19 orchestrate this, what rules they had to be able to  
20 do this, et cetera.

21 So, this is also out of the record, but now  
22 I have a little bit more understanding and I would not

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1 get in the way. So, that is a change.

2 I do think, though, in terms of this in and  
3 of itself is I don't understand -- I always try to look  
4 at how does it benefit College Park? How does it  
5 benefit the community to do something?

6 And I don't understand why at two  
7 residences where there's no common element, there's  
8 no thoroughfare, there's no -- doesn't affect anyone  
9 except people that live on those two residences, why  
10 the city would want to get involved in managing that  
11 except for ticketing like you do for trash or other  
12 things.

13 You don't -- you may have other towing  
14 mechanisms that I'm unaware of, but I don't believe  
15 you own tow trucks to do that. We could call just as  
16 easily to get that tow truck and we're just asking to  
17 do something for you and not have you do that if its  
18 necessary, which I don't believe we ever will have a  
19 problem.

20 The only parking that ever has occurred in  
21 the driveway ever, ever, ever, and I hardly ever say  
22 ever or never, but in this case ever, is the two spots

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1 as you saw in the picture where it was indented on  
2 Steven's property, which will be closed in. So, there  
3 won't be any place to park without really blocking the  
4 driveway.

5 No one has ever parked on my side, because  
6 it's a straight through. You couldn't. So, I think  
7 once that is covered up, there will be no issue. So,  
8 we're kind of making a lot of nothing.

9 That's why I won't stand in the way of it,  
10 because I think it's a nonissue.

11 MAYOR FELLOWS: Thank you.

12 So, are there any persons of record who  
13 would like to argue in favor of the recommendation of  
14 the Advisory Planning Commission, including Number 7?

15 Ms. Schum.

16 MS. SCHUM: Excuse me, Mr. Mayor, but I  
17 believe there is still persons of record who would wish  
18 to testify against the APC recommendation.

19 MAYOR FELLOWS: Oh, I apologize. I did  
20 not realize that there were additional people who  
21 would like to testify against.

22 So, would other people who are against the

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1 recommendation of the Advisory Planning Commission  
2 whether related to Number 7 or anything, care to come  
3 to the podium?

4 All right. Ms. Bryant. And I will, I  
5 guess, remind hopefully everybody now to speak to  
6 things that are on the record.

7 MS. BRYANT: I'm a party of the record.  
8 My testimony is very close to what it was before. So,  
9 I will just go through it again for the record.

10 Thank you for the opportunity to speak  
11 tonight. My name is Catherine Bryant and I live at  
12 7406 Columbia Avenue. I am president of the Old Town  
13 College Park Civic Association and I am speaking  
14 tonight on behalf of the Civic Association regarding  
15 Mr. Behr's request for a departure from the  
16 requirement for a 22-foot-wide driveway from the  
17 parking lot to the street as is required for commercial  
18 use of the property.

19 The Old Town Civic Association held a  
20 meeting on Sunday, May 3rd to discuss this matter and  
21 the motion to express our opposition to granting this  
22 departure passed unanimously.

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1           There were 11 Old Town residents who  
2 attended the remand hearing of the Advisory Planning  
3 Commission on May 7th, 2015. Although, only two of  
4 us actually testified in person.

5           All of those Old Town residents were  
6 opposed to the granting of this departure, and some  
7 also submitted their testimony in writing.

8           There were two issues that the city council  
9 directed the APC to consider through their remand  
10 order.

11           The first is the criterion in the county  
12 zoning ordinance that requires the applicant to show  
13 that the departure will not impair the visual,  
14 functional or environmental quality or integrity of  
15 the site, or the surrounding neighborhood.

16           The second is whether and how the  
17 applicant's proposal to use the driveway of the  
18 adjoining property to meet the 20-foot-wide driveway  
19 requirement can be enforced.

20           With regards to the first issue, we believe  
21 that granting the departure would in fact impair the  
22 functional integrity of the site and the visual,

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1 functional and environmental quality of the  
2 surrounding neighborhood.

3           Parking is a significant problem in our  
4 neighborhood due to the increasing use of many  
5 single-family houses to house groups of five or more  
6 unrelated persons who often each have their own car.  
7 The neighborhood simply was not designed for this many  
8 cars.

9           When there is not sufficient accommodation  
10 for parking on the site, then the spillover parking  
11 detrimentally affects other residents.

12           Residents unable to reach their parking  
13 space will often park in the street where parking is  
14 in short supply.

15           And what is even more problematic is that  
16 they will often park on lawns or in other neighbors'  
17 driveways.

18           Old Town residents frequently need to call  
19 College Park parking enforcement with complaints of  
20 cars parked on lawns. Not only is this unsightly when  
21 it occurs, but also it often results in large mud and  
22 dirt patches where repeated parking has damaged the

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1 lawn.

2           And many of us have experienced  
3 unauthorized cars parking in our own driveways, which  
4 can prevent us from using our driveways or having  
5 access to our own cars because they are blocked by an  
6 unauthorized car.

7           We have had unauthorized parkers tell us  
8 that they needed to park in our driveway because they  
9 didn't want to get a parking ticket. And residents  
10 are often afraid to have the trespassing car towed,  
11 because neighbors who have done that have had their  
12 own cars vandalized in retaliation.

13           We understand that the applicant is  
14 proposing to provide parking spaces in the rear of the  
15 property, but the narrow width of his driveway may  
16 prevent his tenants and their guests from accessing  
17 those spaces particularly when other cars are parked  
18 in the driveway, including cars owned by residents and  
19 guests of the adjoining property that shares the  
20 driveway.

21           In order to address this issue, the APC  
22 voted to approve the driveway variance with the

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1 condition that the applicant and the adjoining  
2 property owner amend their existing shared parking  
3 agreement to allow the city to enforce the agreed upon  
4 parking restrictions.

5 Without effective enforcement, it is  
6 inevitable that the increased occupancy that the  
7 applicant is proposing will result in increased  
8 conflicts over the available parking.

9 At the remand hearing, Bob Schnabel  
10 testified that there were 17 cars that were parked that  
11 afternoon on the two properties, 4618 and 4620 College  
12 Avenue, including three cars parked in the driveway,  
13 three cars parked in the driveway as well as the cars  
14 in the parking area behind the two houses. You have  
15 photographs of those cars in the record marked 24A,  
16 B and C.

17 There was some dispute at the hearing about  
18 whether the actual number of cars was 17 or 14, but,  
19 in any case, it was well over the number of legal  
20 occupants in the two houses, which was 10.

21 Of course tenants have guests, and that is  
22 part of the parking strain caused by increasing the

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1 number of occupants.

2           This situation will only get worse if this  
3 departure is granted and the house is converted to a  
4 rooming house with even more tenants and their guests  
5 competing for a limited amount of parking.

6           I'd like to add that my own personal  
7 experience with shared driveways is that they don't  
8 work well when the houses have a lot of tenants and  
9 they just create conflicts between households.

10           My own house has had a shared driveway with  
11 the house next door for my entire life even before I  
12 was born.

13           Back when that house was owned and lived  
14 in by the two Rainey brothers and their families next  
15 door, 7410 Columbia, there was never a problem.

16           But since that house became a rental with  
17 10 or more occupants, the shared driveway has led to  
18 continuing conflicts and problems.

19           In fact, I have not ever been able to use  
20 my driveway as a driveway since it became a tenant  
21 house, because the tenants next door routinely always  
22 park in the driveway and block it so that I can't get

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1 through. I have complained about this to the property  
2 owner, but the problem has continued.

3 And the house behind me on College Avenue,  
4 the students who live there always park at my garage.  
5 They are always parking in the two spaces and I cannot  
6 get them to stop. I've had them towed. I complained  
7 to Abraham, the owner. I cannot get it stopped.

8 In short -- so I never get to park at my  
9 garage. In short, parking is just a very difficult  
10 problem in Old Town and that is why it is so important  
11 to have the city able to enforce the parking  
12 restrictions, which is the condition that the APC  
13 voted on to require as a condition of granting the  
14 parking departure.

15 Thank you for giving me the chance to  
16 testify on this important matter.

17 MAYOR FELLOWS: Thank you. So, that was  
18 in argument against the recommendation of the Advisory  
19 Planning Commission, but it certainly was supportive  
20 of the idea of the agreement, I think.

21 COUNCILMEMBER STULLICH: Number 7, yeah.

22 MAYOR FELLOWS: Yeah. Are there any

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1 other persons of record who would like to make an oral  
2 argument against the recommendation of the Advisory  
3 Planning Commission?

4 (No comments.)

5 MAYOR FELLOWS: All right. Hearing none,  
6 we're back to any oral arguments of people of record  
7 who are -- or persons of record who would like to make  
8 the argument in favor of the recommendation of the  
9 Advisory Planning Commission.

10 (Speaking off mic.)

11 MAYOR FELLOWS: So, you did actually  
12 testify already and I think we have the gist of what  
13 your comments were.

14 (Speaking off mic.)

15 MAYOR FELLOWS: Yeah, so I think the  
16 record, I believe, will reflect the fact that although  
17 comments were made in the argument against the  
18 recommendation of the Advisory Planning Commission's  
19 recommendation, they were accepting of them even  
20 though there was a disagreement with a part of it.

21 So, I believe at this point there is no --  
22 there's not really too much of an argument on either

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1 -- on both sides, I'd say, at this point, without the  
2 need to hear any other testimony.

3 Is there anyone else who is not -- who is  
4 a person of record who has not testified who would like  
5 to testify?

6 (No comments.)

7 MAYOR FELLOWS: Seeing none, we will go to  
8 the Council.

9 Ms. Stullich.

10 COUNCILMEMBER STULLICH: Thank you, Mr.  
11 Mayor.

12 So, I know this has been a rather  
13 protracted and challenging case. Certainly  
14 complicated issues and not very usual issues for us  
15 to deal with.

16 We have a recommendation before us of the  
17 APC to approve the departure with the conditions  
18 including the condition that the applicant is  
19 objecting to.

20 One of my concerns about that condition is  
21 that as I believe it was written in the APC's decision,  
22 the -- can we see or is there the language about that

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1 this would be settled at the time of the Use and  
2 Occupancy permit being granted?

3 Is there a slide for that, or am I missing  
4 it here?

5 (Comments off the record.)

6 COUNCILMEMBER STULLICH: Oh, I'm sorry.  
7 Right there in plain view.

8 So, prior to the issuance of a Use and  
9 Occupancy Permit, that Use and Occupancy Permit would  
10 be issued by the county, not by us.

11 And so, the requirement is for the  
12 applicant to submit to city planning staff, obtain  
13 approval of and have recorded in the land records of  
14 Prince George's County the amendment to the Joint  
15 Driveway Agreement that we've been discussing.

16 My concern is, is that what if the  
17 applicant doesn't submit such a recorded agreement to  
18 the city and would we -- are we guaranteed to know when  
19 that Use and Occupancy Permit comes to the county to  
20 make its decision, because this condition is not  
21 something that they're a party to, not something the  
22 county is specifically concerned with.

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1           So, my concern is that the applicant could  
2 say that they're willing to do this, but then it might  
3 not happen and the U&O would get granted anyway.

4           So, my concern is I think the condition is  
5 important, but I'm concerned about the timing of it  
6 being something that could just slip through the  
7 cracks because the U&O Permit application would not  
8 come to us.

9           MS. SCHUM: That is a really good question  
10 and a concern, because typically the city doesn't  
11 review and have any say in the issuance of the Use and  
12 Occupancy Permit except in this case, I believe,  
13 because the county has granted the city the authority  
14 to act on departures.

15           The departure resolution needs to be part  
16 of the application for a U&O, and Park and Planning  
17 would need to sign off prior to the issuance of the  
18 U&O that this condition has been met.

19           So, they would therefore if everything  
20 works well, call City Planning staff because that  
21 would be the only way for them to verify it unless --  
22 unless that amendment was also submitted as part of

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1 the applicant's U&O request.

2 So, I believe this would be enforceable  
3 because of -- because we have the authority to act on  
4 this departure. It's a condition. This condition  
5 will be present on the site plan and would need to be  
6 looked at prior to the U&O being issued.

7 So, typically I think it would be a  
8 problem, but not so much here, I don't think. But --

9 MS. FERGUSON: Ms. Schum, can I follow up  
10 on that, too?

11 We don't require that it be noted on the  
12 -- we do require the signs to be noted on the site plan,  
13 I believe, up in 1D of the -- at least the  
14 recommendation from the APC there's a requirement to  
15 show the locations and wording for two No Parking and  
16 Driveway signs with required towing information.  
17 That's there to be shown, I believe, on the plans.  
18 Yeah, revise the site plan.

19 But the contents of the agreement itself  
20 or the reference to the fact that there is an  
21 agreement, there's nothing in Seven that requires that  
22 it be on the plan so far.

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1           Is it your suggestion that a reference to  
2 the reported Joint Driveway Agreement requirement be  
3 placed on the plans also?

4           MS. SCHUM: No. What I was speaking to  
5 were these seven conditions need to be reproduced on  
6 the site plan.

7           MS. FERGUSON: All of them.

8           MS. SCHUM: All of them.

9           MS. FERGUSON: All right. And is that  
10 something -- that would be something then that the  
11 council should require as part of its order?

12           Because right now the recommendation from  
13 the APC only references in; one, revise the site plan;  
14 two, reflect certain things.

15           MS. SCHUM: To be safe, I would recommend  
16 that. We don't do a lot of these. Just thinking it  
17 through, I believe that's how the Planning Board would  
18 handle it. They would require these conditions to be  
19 duplicated on the site plan itself. So, we should do  
20 the same.

21           So, this will be -- this is -- that's a  
22 practice I think we should follow, but certainly

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1 including that in the recommendation is a good idea.

2 MS. FERGUSON: And so, that would make it  
3 more likely that Park and Planning would not miss it  
4 and, therefore, enforce it.

5 MS. SCHUM: Yes.

6 MS. FERGUSON: Since we don't have control  
7 of --

8 MS. SCHUM: Yes.

9 MS. FERGUSON: -- that process.

10 MAYOR FELLOWS: Ms. Stullich.

11 COUNCILMEMBER STULLICH: So, I guess it's  
12 the word "more likely" that concerns me, because more  
13 likely is not a certainty. And we do know things can  
14 go wrong in Upper Marlboro especially around permits.

15 It's certainly not unheard of for permits  
16 to be issued in error or without notifying the city  
17 when that's appropriate. And so, it just seems to me  
18 that I -- I would like to support the APC's  
19 recommendation.

20 Although, I do understand that the  
21 residents of Old Town, which is my own neighborhood,  
22 would like to see the departure not granted. There

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1 is strong feeling about that, but it seems like there  
2 is a middle ground here, which is this agreement. But  
3 I think the agreement needs to be certain and not just,  
4 you know, likely.

5 And so, it seems to me that the time to have  
6 the agreement signed and recorded is prior to the  
7 issuance of the departure rather than at the time of  
8 the U&O, because we can't really be certain that this  
9 will in fact happen at the time of the U&O.

10 MAYOR FELLOWS: All right. Thank you,  
11 Ms. Stullich.

12 Mr. Day.

13 COUNCILMEMBER DAY: Well, I have a concern  
14 in Number 7. I think we're diving to something that  
15 we shouldn't be doing on private property.

16 I think we're putting the city in a  
17 position where we're going to be trying to enforce  
18 something that could be easily handled between a  
19 discussion between two people.

20 We've heard from in the record and time and  
21 time again that this has not been an issue. So, we're  
22 creating something to oversee what the landlords or

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1 the property owners are currently overseeing and  
2 handling.

3 Maybe there's a way that we could make sure  
4 that, you know, they register their process with the  
5 city so that the city is aware of it.

6 I am concerned that by putting a joint  
7 agreement in place between the two houses, between two  
8 owners and then we're telling them that what they have  
9 is not good enough for us when they're trying to do  
10 the right thing, Mr. Behr is trying to do the right  
11 thing and legally, you know, put his property in the  
12 right place in the city by, you know, following through  
13 and doing everything we've asked him to do, I think  
14 that we need to look at Number 7, possibly remove it  
15 and allow the residents -- I mean allow the property  
16 owners to have an agreement that is registered with  
17 the city so that the city sees it. And it doesn't need  
18 to be a law or anything like that.

19 I think we have seen time and time again  
20 without disagreement if you have a problem, you call  
21 Code Enforcement. They will come and they will ticket  
22 a car, but most of the time they will actually try and

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1 take the effort in situations like this to find out  
2 how to solve it without, you know, having somebody  
3 forcefully removed from a property.

4 So, I just don't see this as being the way  
5 to go forward with this. There's got to be a better  
6 way and I think that, you know, we need to allow the  
7 property owners to do their part and to, you know, have  
8 faith in people that we haven't seen an issue before.

9 I think if they put it in their rental  
10 agreements, that this would be something that they can  
11 enforce very easily and we don't need to be overseeing  
12 that as one more thing for us to do.

13 MAYOR FELLOWS: All right. Thank you. I  
14 have two comments from council.

15 Mr. Brennan, and then Mr. Wojahn.

16 COUNCILMEMBER BRENNAN: Thanks. Just a  
17 few comments here. The applicant's counsel mentioned  
18 that the city's enforcement mechanism is unclear.  
19 Although, our counsel did clarify that there are  
20 mechanisms in place that are quite standard for the  
21 enforcement of Item Number 7.

22 Would it be appropriate for that if Item

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1 Number 7 were to become a permanent condition, to  
2 record those particular enforcement mechanisms that  
3 we do have for the applicant?

4 MS. FERGUSON: I don't know that I'm clear  
5 on your question. Let me do a little background  
6 before I try to answer that.

7 Right now the city would not be allowed to  
8 go on private property to ticket or to tow without  
9 permission of the owner -- without permission of the  
10 owner.

11 And that becomes especially difficult when  
12 you're talking about situations where somebody has a  
13 right to be present on the property such as a tenant.

14 So, that's why this Number 7 -- and also  
15 about the signs, there's no way to require going into  
16 the future through an easily enforceable mechanism  
17 that these signs be present.

18 COUNCILMEMBER BRENNAN: The written  
19 agreement would make clear the enforcement of --

20 MS. FERGUSON: Yeah, the purpose of this  
21 -- and nobody is trying to say that these current  
22 owners are not good for their word and are going to

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1 do what they're going to do, that they say they're  
2 going to do, but they're not necessarily going to own  
3 these properties down the road.

4           The way that you make sure that a condition  
5 stays with the property is to record it. And that's  
6 the only way to do it, because then it's in the chain  
7 of title and everyone taking the property after that  
8 is working under that requirement.

9           Departures and the requirements of  
10 departures get lost in the midst and they are more  
11 difficult for the city to enforce.

12           The city does have zoning enforcement, but  
13 then of course the default is we're back to the city  
14 enforcing. We have zoning enforcement, we have  
15 parking enforcement. We don't have the ability right  
16 now to go onto private property and ticket without the  
17 owner's permission.

18           We do own the rights of way in other places  
19 where we have permission such as the parking lots that  
20 we have agreements about. That's why we have those  
21 agreements.

22           COUNCILMEMBER BRENNAN: And as I noted

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1 earlier when I went off script a little bit, the  
2 applicant's own enforcement mechanism is not a part  
3 of the record.

4 And they've stated that the enforcement  
5 mechanism that they have themselves and between the  
6 other adjacent owner is the reasoning for the removal  
7 of the seventh condition.

8 MS. FERGUSON: Yes.

9 COUNCILMEMBER BRENNAN: Would that need  
10 to be -- I imagine that would -- it would be helpful  
11 to have that as -- that clarified before --

12 MS. FERGUSON: There's a Joint Driveway  
13 Agreement. It's an old agreement and it prevents  
14 parking in the driveway. And of course there is  
15 parking in the driveway now.

16 It depends, however, regardless of whether  
17 anyone is following it all the time or not following  
18 it, it depends on the enforcement willingness of two  
19 private parties.

20 There's no public enforcement mechanism.  
21 There's just private enforcement mechanisms.

22 It depends on what complaint a tenant wants

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1 to make to the owner, and what the owner then wants  
2 to do about that. So, all those are private  
3 decisions.

4 This is a public benefit that's being  
5 granted through a process to be able to have a rooming  
6 house there. It requires a 22-foot-wide driveway  
7 which is very clear is not there even using the  
8 adjacent property's width.

9 And this is a difficult issue, because --  
10 and you don't run into it very often. But what makes  
11 it difficult is you are using someone else's property,  
12 a dimension from somebody else's property, or use of  
13 somebody else's property to support a departure for  
14 your property.

15 And if there's nothing there that  
16 guarantees that that's going to continue, I mean,  
17 these parties and the parties subsequent to them could  
18 decide not to have a joint driveway use agreement.  
19 They could decide to do that.

20 COUNCILMEMBER BRENNAN: So, that  
21 departure could be reversed.

22 MS. FERGUSON: Well, their agreement

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1 could be reversed. If you have a publicly enforceable  
2 agreement that's recorded, no, because it would take  
3 all the parties to take that off.

4 Now, as a -- if this departure was no longer  
5 used, if this house was no longer used as a rooming  
6 house and would no longer require that kind of width  
7 of the driveway, the council could certainly say, you  
8 know, only for so long as this property is used as a  
9 rooming house.

10 (Comment off mic.)

11 MS. FERGUSON: That's already in there.  
12 That's already part of the recommendation. So, my  
13 apologies. It's already part of the recommendation.  
14 It's only for so long as the house is used as a rooming  
15 house.

16 COUNCILMEMBER BRENNAN: Okay. In the  
17 pictures in the record there appear to be 13 to 14  
18 vehicles parked between the two properties.

19 MS. FERGUSON: Yes.

20 COUNCILMEMBER BRENNAN: And the APC has  
21 done a good job of providing us recommendations, but  
22 there doesn't seem to be any design elements on the

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1 property that would restrict that from recurring.

2 MS. FERGUSON: Part of -- and I think Ms.  
3 Schum can speak to this, too. Part of the landscaping  
4 that's being proposed for this does, with the railroad  
5 ties, hopefully stop that parking in the front yard  
6 that's been happening very frequently there.

7 COUNCILMEMBER BRENNAN: Right.

8 MS. FERGUSON: And there's also some --  
9 the narrowest part of the driveway is 16.6 feet. And  
10 -- I'm sorry, total. Total 16.6 feet at the narrowest  
11 point. So, obstructions there are a real problem.

12 And so, there can't be any obstructions put  
13 in there. And that's part of these conditions also,  
14 but then it comes down to enforcement of that.

15 COUNCILMEMBER BRENNAN: One last  
16 question. I've asked Planning previously their  
17 reason for the 22-foot-wide driveway. Although the  
18 -- it's not really -- it was more of a technical answer  
19 and I was wondering from a legal standpoint if there  
20 were any liability issues why that 22-foot requirement  
21 is there and if -- how that might impact the future  
22 -- the property -- present and the future owners of

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1 the property.

2 MS. FERGUSON: The rooming house, and  
3 we've had some issues with this going back and forth  
4 with the county and talking to the county about the  
5 definition of rooming house.

6 The proposal right now is for nine separate  
7 bedrooms and there is an allowance of nine persons to  
8 be living in this property.

9 Currently, legally speaking, only five  
10 persons -- unrelated persons could live there, because  
11 it's a one-dwelling unit premises.

12 So, this would change that to nine. Their  
13 floor plan is showing us nine bedrooms. And so,  
14 you're increasing the amount of parking -- I'm sorry,  
15 of the occupant -- legal occupant load.

16 That requires a certain amount of parking,  
17 minimum parking at the rear of this property which is  
18 being provided. So, that side is not an issue.

19 On the other side where this applicant  
20 doesn't have control of the other property, the  
21 occupant load there is whatever it is and the parking  
22 is whatever it is there.

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1           So, you know, they're not dependent on each  
2 other for the parking spaces that have to be provided  
3 and delineated. At least this one property isn't.

4           That's, again, the issue of using someone  
5 else's property to come up to an acceptable amount of  
6 width for this driveway.

7           The reason it's a 22-foot-wide requirement  
8 is because it's considered to be a commercial use.  
9 And that's the requirement, because there's  
10 anticipated to be more coming and going on the  
11 property.

12           COUNCILMEMBER BRENNAN:    Okay.    Thank  
13 you.

14           MAYOR FELLOWS:   Thank you, Mr. Brennan.  
15           Mr. Wojahn.

16           COUNCILMEMBER WOJAHN:    Thank you, Mr.  
17 Mayor. I have a question.

18           In response to Council Member Stullich's  
19 concerns about the enforceability of this, I am  
20 somewhat troubled by the lack of certainty that if we  
21 require something like Condition Number 7 that it  
22 might be ignored or forgotten or not noticed by the

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1 County Planning Board.

2 And I'm wondering if it might be possible  
3 in response to Council Member Stullich's suggestion  
4 that it be enforced before -- prior to the issuance  
5 of the departure, if it might be possible to consider  
6 tabling this or putting it in abeyance until the point  
7 where the parties come to the table with an agreement  
8 along the lines that are stated and then to pass a  
9 departure at that point.

10 MS. FERGUSON: I don't -- I checked in with  
11 Ms. Schum about this, too. We don't believe sitting  
12 here this evening that there's any statutory  
13 requirement as to when -- what the trigger would be  
14 here. And so, we think that prior to the departure  
15 being granted would be one -- a trigger you could use  
16 that the --

17 COUNCILMEMBER WOJAHN: Okay.

18 MS. FERGUSON: -- agreement would have to  
19 be -- the wording would have to be agreed to, approved  
20 and recorded before the departure would proceed.

21 COUNCILMEMBER WOJAHN: So, we could vote  
22 to essentially grant the departure tonight once, but

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1 only upon that time at which an agreement is in  
2 compliance with Number 7 is presented.

3 MS. FERGUSON: Yes. We think that the --  
4 I'm sorry.

5 MS. SCHUM: Well, technically, wouldn't  
6 the council have to deny the request until such time  
7 as --

8 MS. FERGUSON: I think probably that they  
9 could continue this matter subject to getting that  
10 agreement. And then with the understanding that  
11 assuming that the agreement came through, that you  
12 would then be approving the recommendation from the  
13 APC with the added requirement that -- of having the  
14 departure contingent on this agreement being  
15 provided.

16 COUNCILMEMBER WOJAHN: Okay.

17 MS. FERGUSON: I think you could continue  
18 it.

19 MAYOR FELLOWS: Thank you, Mr. Wojahn.

20 MS. SCHUM: I'm just looking at the  
21 language in our code. It doesn't say "continue."  
22 So, that's why I question that.

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1           It says, the Mayor Council shall accept,  
2 deny or modify the recommendation of the Commission  
3 or return the variance application to the Commission.

4           MS. FERGUSON: And before they take any of  
5 those steps, they could continue the case until  
6 they're ready to hear it. So, I think -- I think that  
7 you could do that. I don't think that's precluded by  
8 that.

9           MS. SCHUM: Okay.

10          MAYOR FELLOWS: All right. So, any other  
11 council members' questions or comments?

12          So, there is -- Ms. Stullich.

13          COUNCILMEMBER STULLICH: So, I just want  
14 to say a few things briefly. We heard that the parking  
15 is not going -- parking in the driveway is not going  
16 to be a problem, but in fact we do have a photo in the  
17 record of three cars parked in the driveway on the very  
18 day of the remand hearing.

19          We've also been told it's not going to be  
20 a problem in the future. And if that's true, then  
21 there really should be no objection to an agreement  
22 for city enforcement. If it's not going to be a

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1 problem, then city enforcement won't be needed.

2 I think having provisions in the lease  
3 about this is a great idea, but we know that tenants  
4 don't always abide by all of the provisions of the  
5 lease.

6 In terms of whether the city should not get  
7 involved because it's an issue on private property,  
8 in fact the city does get involved on issues on private  
9 property all the time. And particularly in Old Town  
10 we have a lot of issues on private property that do  
11 affect other residents of the neighborhood.

12 That's why we have this committee called  
13 the Neighborhood Quality of Life Committee.

14 And we do have also testimony in the record  
15 that parking is a significant problem in the  
16 neighborhood in a variety of ways.

17 And the fact that allegedly it hasn't been  
18 a problem in the past, that's in the past. There was  
19 fewer occupants.

20 Fewer occupants means not only fewer  
21 occupants, but also fewer guests. More occupants are  
22 going to have more guests. It just stands to reason.

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1           And so, for all of those reasons I would  
2 like to support the recommendation of the APC, but to  
3 modify it and to change the timing of when that signed  
4 agreement, recorded agreement would be provided in  
5 advance of the departure approval.

6           And so, in order to do that, it seems that  
7 we would need to continue this proceeding to allow time  
8 for that to occur. So, I would like to make a motion  
9 to that affect.

10           MAYOR FELLOWS: All right. We have a  
11 motion.

12           Do we have a second?

13           COUNCILMEMBER WOJAHN: Second.

14           MAYOR FELLOWS: Second by Mr. Wojahn.

15           Further comments?

16           Ms. Ferguson.

17           MS. FERGUSON: Mayor, I think at this  
18 point it would be appropriate to inquire of the  
19 applicant and his attorney to make sure that they have  
20 their opportunity to comment on whether -- what their  
21 position is with respect to the continuance for this  
22 purpose.

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1           MAYOR FELLOWS: All right. Thank you for  
2 that suggestion.

3           Mr. Farrar, thank you.

4           MR. FARRAR: Mr. Mayor, as a part of this,  
5 Mr. Behr had to receive a Historic Area Work Permit.  
6 I haven't had an opportunity to review the file as to  
7 if the Historic Area Work Permit has an expiration  
8 date. It very well may.

9           So, again, we can't leave this going out  
10 into perpetuity. The matter is before the Council  
11 again. This has been going on for a year.

12           I think that the Council can make a  
13 decision this evening. Thank you.

14           MAYOR FELLOWS: All right. And, Mr.  
15 Behr.

16           MR. BEHR: Yes. Ladies and gentlemen, I  
17 again appreciate your time. We all have been working  
18 hard on this. It has been a very long time.

19           I do have other agreements with the County  
20 that are also in effect that need to be met to get this  
21 through, as well as the Historic Work Area Permit.

22           We would definitely be if it is of the

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1 opinion that this Number 7 does end up having to stay,  
2 we will ensure that that agreement if you want to put  
3 the language in there that it is going to be signed,  
4 we will ensure it is signed before the departure is  
5 granted. That way we do not have to reconvene and wait  
6 another several months to get this done.

7 We'll work with you guys. I've been  
8 working with every level of this to get this completed.  
9 And any way I can be helpful in pushing this forward,  
10 I would like to do that. Appreciate it.

11 MAYOR FELLOWS: Ms. Ferguson.

12 MS. FERGUSON: Okay. Can I suggest that  
13 the last time that this happened in terms of the order  
14 from the Council, the Council referred it to the  
15 attorney for preparation of an Order.

16 MAYOR FELLOWS: Mm-hm.

17 MS. FERGUSON: We could have that prepared  
18 again, a preparation of an order for your next session.

19 MAYOR FELLOWS: Mm-hm.

20 MS. FERGUSON: And presumably that would  
21 give Mr. Behr and his attorney sufficient amount of  
22 time to come up with the Millers with an agreement that

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1 -- or acceptable language.

2           Because if you premise it, if you condition  
3 it on the issuance of the departure order or  
4 resolution, you'll be issuing it and you'll have to  
5 have the agreement done before then or --

6           MR. BEHR: (Speaking off mic) I cannot get  
7 through the County without the departure.

8           MS. FERGUSON: Right. So, what if we set  
9 -- if this gets put down for the consideration of the  
10 final order, the written order as is stated here and  
11 you would work with the Millers to come up with an  
12 agreement then that's acceptable to the City prior to  
13 this coming up before the Council, at least then you  
14 would have a date that you knew it was coming back  
15 before council and you could move from there. It  
16 would give you a date certain for it.

17           Otherwise they can't really issue an order  
18 that makes it -- once they issue the order, the  
19 departure is done.

20           MS. SCHUM: (Speaking off mic) are met,  
21 the departure is official.

22           MS. FERGUSON: Complied with, but --

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1 MS. SCHUM: So, it's subject to condition.

2 MS. FERGUSON: Council Member Stullich is  
3 talking about putting, you know, instead of saying  
4 prior to the issuance of the Use and Occupancy Permit,  
5 prior to the issuance of a decision in this case about  
6 the departure.

7 That was the question, and we've answered  
8 that question. So, then the question to the applicant  
9 and his attorney is if we set this down for the approval  
10 of a final order, written order on this in September,  
11 so you have a date certain and that gives you some dates  
12 to work with so that you can get the agreement together  
13 and get it into the City for approval, is that  
14 something that you could work with?

15 MR. BEHR: Honestly, I really believe that  
16 we've discussed this, hashed this out, done everything  
17 with this that we possibly can.

18 We are all agreeing that obviously Seven  
19 is going to stay for everyone to have agreement, maybe.  
20 I don't know. No vote has been taken on that.

21 No vote has been taken to -- on the  
22 departure as yet in eight months since we've had this

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1 before the Council.

2 And to then delay it again just to get a  
3 written agreement, which we're already saying if that  
4 is a condition I would have to meet before I get the  
5 departure, it doesn't make sense to me that we would  
6 have to wait another month and then maybe have another  
7 potential glitch in another month.

8 We're going to be here three years before  
9 this is resolved.

10 MAYOR FELLOWS: Well, if I might respond,  
11 I think a significant difference between the last time  
12 you were here was that we remanded back to the Advisory  
13 Planning Commission, which resulted in a fairly  
14 lengthy process of going to another hearing before the  
15 Advisory Planning Commission. And that's scheduling  
16 another return to us after the hearing was over.

17 I believe that what we're hearing is some  
18 concern about -- and I think there's also a lot of  
19 agreement that wanting to work something out where  
20 there's agreement on some sort of enforcement  
21 mechanism that it's a publicly enforceable parking  
22 restriction and I think sort of setting that sort of

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1 putting in motion a process where we're going to be  
2 addressing this in September it's not like going back  
3 to the Advisory Planning Commission.

4 This is something where we're hearing you  
5 that we don't want to drag this on. I don't think the  
6 City wants to. We really want to resolve this.

7 And we do appreciate your patience in this  
8 matter, but I think that because you're in agreement,  
9 that we want to come to an agreement before, you know,  
10 issuing Use and Occupancy Permit that there's value  
11 in just setting it for the next September hearing or  
12 September meeting so that we've got clarity.

13 That's my observation. So, and hopefully  
14 you'll take it in the spirit and you're right. We have  
15 not acted on this at this point. We're only  
16 discussing.

17 MR. FARRAR: Right. But, Mr. Mayor, if I  
18 may, I think the real problem is that you don't have  
19 an order directing him to go to the City to do that.

20 So, if you adopt it as it is, I think the  
21 language is sufficient. I think Ms. Schum has already  
22 laid out a mechanism by which -- by including this in

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1 the site plan and having it recorded.

2 Then you're also going to have the  
3 agreement recorded after it's approved by city  
4 planning staff. So, I think as it's written, I think  
5 you already have what you're after.

6 MAYOR FELLOWS: Except that the concern is  
7 that -- the desire at least of some council is to have  
8 it prior to the issue of the departure as opposed to  
9 the Use and Occupancy Permit.

10 So, it's actually a little earlier than the  
11 issuance of the Use and Occupancy Permit, which for  
12 the purpose of actually moving forward I don't think  
13 it has that much of a difference for you all if there  
14 is actually an agreement that works.

15 Ms. Stullich.

16 COUNCILMEMBER STULLICH: Just a short  
17 comment.

18 The departure is the last decision that we,  
19 the City Council, get to make in this case.

20 So, when you refer to the approval of our  
21 planning staff, what you mean is that planning staff  
22 would, under your scenario, they would see that the

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1 words of Number 7 were on the site plan, but that's  
2 not the same as being certain that there will be a  
3 signed agreement.

4 And so, the -- to me, the way to be certain  
5 that this agreement that's been talked about will in  
6 fact happen, is to have that happen before the  
7 departure.

8 And if we continue, you know, if my motion  
9 passes to continue this in order to allow this  
10 agreement to be created, then when that agreement is  
11 signed and before us, then we have no reason to not  
12 approve the departure.

13 MR. FARRAR: Right. Except what the  
14 Condition Number 7 actually doesn't say without the  
15 departure. You'll have the agreement with the City  
16 and the amendment. That will be approved by planning  
17 staff prior to the issuance of the U&O.

18 So, that will be on the site plan, which  
19 will be also recorded with Park and Planning.

20 COUNCILMEMBER STULLICH: Not  
21 necessarily. I mean, it just -- it doesn't  
22 necessarily happen that way.

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1 MR. FARRAR: It always happens that way.  
2 The site plans are always with Park and Planning.

3 So, if we list these conditions on the site  
4 plan --

5 COUNCILMEMBER STULLICH: Right, but Park  
6 and Planning doesn't always -- Park and Planning, you  
7 know, with all due respect, Park and Planning makes  
8 mistakes in the issuance of permits.

9 MR. FARRAR: Right. I understand. I  
10 understand your concern. But if it has those seven  
11 conditions, Park and Planning checks to make sure that  
12 those conditions are met prior to the issuance of the  
13 U&O.

14 COUNCILMEMBER STULLICH: It depends.  
15 They may not consider those conditions are relevant  
16 for them to check.

17 MAYOR FELLOWS: So, I think we hear your  
18 concerns. So, by advice of council we do have a motion  
19 and a second before the Council.

20 The motion is in essence to continue the  
21 matter. Actually, and because we have a motion and  
22 a second, I mean, we're actually now addressing

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1 something that's on the table.

2 We're taking -- actually, is this the kind  
3 of motion and second that where additional comments  
4 and then the public is heard from?

5 Because you asked us, and actually I  
6 thought it was good idea to hear from the applicant,  
7 but we heard the applicant's concerns about that. So,  
8 I guess I'm wondering if we need or should hear from  
9 additional people in the public who want to testify  
10 on this, or is it back to the Council?

11 MS. FERGUSON: This is not a legislative  
12 act.

13 MAYOR FELLOWS: Right.

14 MS. FERGUSON: This -- you are deciding as  
15 a quasi-judicial body.

16 MAYOR FELLOWS: Yes.

17 MS. FERGUSON: So, you take -- you've  
18 already followed your process up to now.

19 MAYOR FELLOWS: Right.

20 MS. FERGUSON: And so, there's no further  
21 process to follow.

22 MAYOR FELLOWS: Right.

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1 MS. FERGUSON: What you're talking about  
2 now is, the suggestion is that I think if in fact you  
3 are in agreement that -- in your decision that you want  
4 to have Number 7 remain in and that an agreement must  
5 be reached and approved by the City and be ready for  
6 recordation and be recorded prior to the issuance of  
7 the departure decision, what you would do is agree,  
8 do a motion to that effect and say we are going to refer  
9 this matter for a written order, like you did for the  
10 first order that you had in this case --

11 MAYOR FELLOWS: Mm-hm.

12 MS. FERGUSON: -- to come back to you. It  
13 would come back to you in September. That would give  
14 the applicant and the Millers the opportunity to put  
15 together the language.

16 It's not that complicated the language on  
17 this, and their own joint driveway agreement is not  
18 all that complicated either.

19 And, you know, to get the language  
20 together, get it approved so that you can come in and  
21 issue the order. And that requirement will have been  
22 met by that.

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1           MAYOR FELLOWS:    So, I want to ask the  
2 motion maker if that's acceptable as a -- basically  
3 a longer version of the motion that you want to make.

4           COUNCILMEMBER STULLICH:   Yes, it is.   And  
5 I'm certainly comfortable with that.   And I guess I  
6 would also add that we sometimes go into special  
7 sessions to approve things -- a work session.

8           So, if the agreement were ready at that  
9 time, I wouldn't be averse to having that be a special  
10 session item.   Does that --

11          COUNCILMEMBER FELLOWS:   That doesn't need  
12 to be in the motion, but I think that intent is  
13 understood.

14          And the first work session is September  
15 1st, the very first day of September.   And then ---  
16 so, it's potentially a relatively quick, short --- and  
17 the second, is that acceptable to the second?

18          COUNCILMEMBER BRENNAN:   Yes.

19          MAYOR FELLOWS:    All right.   So, the  
20 motion is before the body.   Any other comments from  
21 council on the motion?

22          (No comments.)

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1 (Voting.)

2 MAYOR FELLOWS: All right. I think we'll  
3 probably need a roll call.

4 So, I'll go Dr. Kabir.

5 COUNCILMEMBER KABIR: No.

6 MAYOR FELLOWS: Mr. Wojahn.

7 COUNCILMEMBER WOJAHN: Yes.

8 MAYOR FELLOWS: Mr. Brennan.

9 COUNCILMEMBER BRENNAN: Yes.

10 MAYOR FELLOWS: Mr. Dennis.

11 COUNCILMEMBER DENNIS: Yes.

12 MAYOR FELLOWS: Ms. Stullich.

13 COUNCILMEMBER STULLICH: Yes.

14 MAYOR FELLOWS: Mr. Day.

15 COUNCILMEMBER DAY: No.

16 MAYOR FELLOWS: Mr. Hew.

17 COUNCILMEMBER HEW: Yes.

18 MAYOR FELLOWS: And Ms. Mitchell.

19 MAYOR PRO TEM MITCHELL: No.

20 MAYOR FELLOWS: All right. So, it's  
21 six-two in support of the motion. The motion is --

22 MS. SCHUM: I think it was five-three.

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1           MAYOR FELLOWS: Oh, five-three. Sorry  
2 about that. Five-three, yes. Five-three is  
3 referred and we will be hearing this very soon.

4           So, thank you for perhaps the lengthiest  
5 hearing and follow-up that I've experienced.

6           We now go to -- and I apologize for all of  
7 you who are here for the normal council meeting. We  
8 went much longer than typically on the oral argument  
9 and follow-up discussion.

10           (Whereupon, at 8:40 o'clock p.m. the Oral  
11 Argument for Case No. CPD-2014-01 was concluded at  
12 this time.)

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